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Imposition of Law Contradicts Religious Sentiments: An Insight into India's Landmark Judgment

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Embarking on a journey through the Sabarimala Verdict and the nuanced exploration of rationality within the realm of religion, this article challenges prevalent inconsistencies in the treatment of temples with gender-specific restrictions. The discourse expands beyond legal nuances, underscoring the broader implications of landmark decisions and their lasting impact. Instead of advocating for a uniform civil code, the primary objective is to safeguard diverse religious beliefs, as evidenced by a robust minority opinion from Justices Nariman, Chandrachud, and Indu Malhotra. Navigating the intricacies of the judicial review process, this minority perspective emerges as a crucial facet. Shifting focus to the Hijab Verdict, the article contends that notions of rationality cannot be singularly invoked in matters of religion. It explores the complexities surrounding the right to wear hijabs, highlighting the intersection of religious freedoms and educational institutions. In essence, this article seeks to unravel the subtleties of case interpretations, advocating for a nuanced approach to balancing the rights of Indian citizens within the realm of religious practices.

Keywords: *religious sentiments, freedom of religion, equality, interpretation.*

INTRODUCTION

In India, which is the land of heavenly avatars, numerous tribal religions, and ritual sacrifices, one might question their logical relevance. A plethora of faiths, ideologies, and traditions coexist

harmoniously in our intricate society. Would it be feasible for a Christian woman to approach the Supreme Court seeking a directive mandating the Catholic Church to grant equal rights and roles to women within the clergy? The peaceful coexistence in India can be attributed to the general Indian ethos of live and let live. India, renowned for its distinctive culture and religious tolerance, fosters an environment where individual spiritual practices are respected. Given the nation's multicultural fabric, it should lean more towards respecting religious practices than strict legal proceedings. In such a diverse nation, the freedom to follow even unconventional practices is safeguarded by constitutional principles and values. This article aims to underscore the concept of state-regulated secularism and religious acts where the state should refrain from intervention. It delves into notable cases in Indian history that highlighted concerns about the judiciary's decisions conflicting with personal freedoms. The article also touches upon the hijab case, wherein the high court imposed restrictions on wearing the hijab in school and college classrooms. The discourse isn't solely about equality and secularism; the hijab, as a religious practice in Islam, is protected under Article 25 of the Indian Constitution. The decision to wear a hijab in classrooms is fundamentally a 'matter of choice' and a 'fundamental right' intertwined with a girl's 'dignity and her privacy, even within school premises'.¹ Regardless of whether wearing the hijab is deemed a religious practice, an essential religious practice, or a societal norm for Muslim women; it is the believers' interpretations of the headscarf that truly matters². Article 25 grants every citizen the 'freedom of conscience and the right to profess and practice...'³. If a belief is genuinely held and harms no one, there should be no valid reason to prevent an individual from wearing any attire in addition to the stipulated uniform or from entering a temple.⁴

¹ Nisha, 'In 2022, the Supreme Court supported women's rights five times' *Deccan Era* (21 December 2022) <<https://deccanera.com/in-2022-the-supreme-court-supported-womens-rights-five-times/>> accessed 12 December 2023

² *Ibid*

³ Constitution of India 1950, art 25

⁴ 'Why Justice Sudhanshu Dhulia Wanted Karnataka Order Banning Hijab in Schools Struck Down' *The Wire* (13 October 2022) <<https://thewire.in/law/justice-sudhanshu-dhulia-supreme-court-karnatka-hijab-ban>> accessed 12 December 2023

SABARIMALA VERDICT

Nestled in the enchanting landscapes of Kerala, Sabrimala stands out with its unique rituals and traditions. This sacred site, open only five days a month, follows a hands-off approach to religious matters. Pilgrims embarking on the journey observe a 41-day Vratam, marked by fasting and donning a special Mala, typically crafted from Rudraksha or Tulasi beads. Devotees bound by sacred vows rigorously practice celibacy, refrain from alcohol, avoid profanity, and nurture their spiritual connection, allowing their hair and nails to grow. The journey extends beyond dietary choices, urging a Lacto-vegetarian ethos, with devotees embracing altruism and viewing all as manifestations of Lord Ayyappa. Acts of kindness, twice-daily ablution, routine temple visits, and donning simple traditional attire in black or blue complete the spiritual tapestry, making the pilgrimage to Sabarimala a condensed yet profound journey of unwavering devotion.

In the rich tapestry of Indian dietary traditions, vegetarianism goes beyond a simple dietary choice; it embodies a lacto-vegetarian ethos. Devotees are called to adopt a spirit of altruism, recognizing everything and everyone as a manifestation of the divine Lord Ayyappa. Encouraged acts of kindness, coupled with the twice-daily ritual of ablution, routine temple visits, and attire in black or blue, complete the spiritual landscape. Sabrimala, through these distinct rituals, paints a vibrant picture of spiritual discipline and steadfast commitment, transforming each pilgrimage into a stirring journey of devotion.

In a 1991 verdict against the Travancore Devaswom Board⁵, Justices K. Paripooran and K. Balanarayana Marar of the Kerala High Court prohibited women aged 10 to 50 from entering temples, granting men of all ages unrestricted access to prayers. This Supreme Court ruling, coupled with subsequent actions by the state government, ignited widespread protests in Kerala, with many Hindus considering it an unwarranted intrusion into their beliefs and

⁵ Devi Nayar, 'House as Ritual: Stories of Gender, Space, and Caste in Colonial Kerala' (Masters of Environmental Design Theses, Yale School of Architecture
<<https://elischolar.library.yale.edu/cgi/viewcontent.cgi?article=1005&context=envdesign>> accessed 12 December 2023

traditions. Notably, numerous Hindu women took the lead in these protests. For those less familiar with Ayyappa and Sabrimala, there is a tendency to interpret these traditions solely through the lens of women's rights. While the perennial debate of religion versus the constitution persists, it's crucial to recognize that this issue extends beyond mere discrimination; it revolves around the shared worship of Lord Ayyappa by individuals of all genders.

In stark contrast, Islam and Christianity, as relatively newer religions, boast codified practices – a characteristic that Hinduism, the majority of whose temples lack written documentation, doesn't share. Rooted in oral transmission, Hindu beliefs have evolved over millennia, and certain temples in India uphold age-old customs by restricting men's entry while allowing women exclusive access on specific days for rituals. Examples abound, from the Mata Temple in Muzaffarnagar to the Devi Kanyakumari in Kanyakumari, the Lord Brahma Temple in Rajasthan, and the Attukal Bhagavathy Temple in Kerala. The intricate tapestry of customs and rituals surrounding each Hindu deity adds further complexity.

Unlike mosques and churches which serve primarily as places of worship, Hindu temples are seen as the very abodes of deities, making gods an integral part of these sacred spaces. Some temples, due to their resident deity's traditions, uniquely bar men while exclusively welcoming women for prayers. Labelling the longstanding tradition of Sabarimala as patriarchal or discriminatory towards women oversimplifies and overlooks the nuanced realities. The Supreme Court's ruling appears to hinge on an erroneous parallel with its triple talaq judgment, a perspective contested by those fervently opposing the Sabarimala tradition in Kerala. Interviews with Hindu devotees underscored that the core issues in their petitions remained unaddressed by the majority verdict. Justice Malhotra's dissenting judgment, resonating with these concerns, asserted that profound religious sentiments protected by Article 25 of the Indian

Constitution should not be routinely interfered with by the courts. She emphasized that religious practices shouldn't be solely evaluated based on the premise of Article 14.⁶⁷

NOTIONS OF RATIONALITY CANNOT BE INVOKED IN MATTERS OF RELIGION

‘What constitutes an essential religious practice should be decided by the religious community and not by the court. The court shouldn't interfere unless there's an aggrieved individual from that particular religious section’ argued Justice Malhotra. She believed that the Sabarimala Temple qualifies as a unique religious institution, emphasizing that the determination of essential religious practices should consider the customs, traditions, and beliefs intrinsic to a specific faith. In her view, the judiciary should exercise restraint and refrain from overreaching into matters deeply rooted in religious sentiments, allowing communities to self-govern their religious practices.⁸ In Justice Malhotra's perspective, the impact of the current judgment extends beyond just Sabarimala. She emphasized that deeply entrenched religious issues shouldn't be ordinarily meddled with. Furthermore, she articulated that ‘the right to equality shouldn't be the predominant benchmark to assess religious practices. It's the prerogative of the worshippers to define the fundamental practices of their religion, not the judiciary’. This underscores her belief in the autonomy of religious communities in shaping and preserving their own traditions, with the right to equality being considered in a manner respectful of the diverse religious fabric of the country.

The traditions of the Sabarimala Temple aren't rooted in considering men superior to women. The central aspect is the celibacy of the deity, Lord Ayyappa, which forms the primary basis for restricting women's entry into the temple. It's essential to recognize that the temple is a sacred

⁶ ‘Those women who enter Sabarimala temple, rip them into two, says actor Thulasi in presence of state’s BJP chief’ *Free Press Kashmir* (13 October 2018) <<https://freepresskashmir.news/2018/10/13/those-women-who-enter-sabarimala-temple-rip-them-into-two-says-actor-thulasi-in-presence-of-states-bjp-chief/>> accessed 12 December 2023

⁷ ‘Sabarimala Verdict: A Timeline of Temple Entry Issue’ *The Wire* (14 November 2019) <<https://thewire.in/law/sabarimala-review-petition-verdict>> accessed 12 December 2023

⁸ Shekhar Gupta, ‘Supreme Court cannot become the priest between Indians and their Gods’ *The Print* (20 October 2018) <<https://theprint.in/national-interest/sabarimala-verdict-shows-why-supreme-court-should-stay-out-of-religion/137468/>> accessed 12 December 2023

place of worship, not a tourist destination, demanding respect for its longstanding traditions. Devotees annually undergo a stringent period of austerity, abstaining from all indulgences and marital relations for 41 days to establish a spiritual connection with the deity before embarking on their pilgrimage. This rigorous regimen includes refraining from meat, alcohol, nicotine, and sexual relations, among other practices.⁹ The Sabarimala Temple's restricted accessibility on specific days prompts devotees to meticulously plan their visit, raising a pertinent question: why is it perceived as discriminatory against women when men, too, must undergo a demanding 41-day purification process for their mind, body, and soul before praying to Lord Ayyappa? Common sense suggests that adhering to such a stringent routine could pose challenges for women during menstruation. This perspective doesn't dismiss the concerns but is rooted in longstanding beliefs and narratives. Allowing access to menstruating women might compromise the unique celibacy and austerity associated with Lord Ayyappa, underscoring the delicate balance between tradition and evolving societal norms.¹⁰

HIJAB VERDICT

In Udupi, Karnataka, a wave of protests and counter-protests has unfolded over school uniforms, particularly the contentious ban on hijabs for Muslim female students. The dispute has witnessed individuals asserting their right to don preferred outfits, proudly showcasing saffron attire and other choices as a symbol of their freedom of expression. The clash highlights the intersection of religious practices, personal freedoms, and institutional regulations in the ongoing discourse surrounding the hijab verdict.¹¹ What sparked the controversy that set off ripples of concern about the delicate balance between secularism and religious practices? The ongoing discourse on religion has now become an all-encompassing national debate, captivating the attention of the entire nation.

⁹ *Ibid*

¹⁰ *Ibid*

¹¹ Prem Shankar Jha, 'Debate: Thanks to the Hijab Issue, India is Falling Once More into the Communal Trap' *The Wire* (22 February 2022) <<https://thewire.in/communalism/debate-hijab-karnataka-shah-bano>> accessed 12 December 2023

As student protests against the college administration gained momentum, their impact quickly transcended local boundaries, evolving into a statewide issue. Bhandarkar's College echoed a similar fervor, witnessing female students draped in saffron shawls marching vehemently against the hijab ban. Concerns about the potential disruption of Muslim female students' education emerged, as there were indications of possible reluctance to attend school. The court emphasized, 'An individual need not prove that their perceived religious practice is mandated; it could be any matter of faith or personal conscience'. However, the nuances of such practices remain subject to the provisions of Article 3 (fundamental rights) of the Constitution. Full-sleeved clothing and covering one's head are regarded as integral tenets of Islam, a sentiment affirmed by the Karnataka High Court in the Amnah case. In a democratic context, wearing a headscarf to school doesn't pose any threat to public morality, health, or order.

Article 14 of the Indian Constitution guarantees everyone's right to equality, even if the government categorizes individuals for specific objectives. Freedom of religion encompasses the liberty to manifest and believe in one's religion. The hijab, seen as attire for women to cover their chest and head, may take various forms but must align with local customs. Drawing a parallel in other religions, such as Sikhism, the '5 Ks' hold significance as mandated articles of faith. Sikhs are permitted to wear them at all times, especially in educational institutions, to signify their devotion. The '5 Ks' – kesh (uncut hair), kara (a steel bracelet), kanga (a wooden comb), and kirpan (a steel sword) – are allowed in educational institutions as essential religious practices under Article 25.¹²

A multitude of Muslim female students passionately express their wish to wear hijabs within educational institutions, a practice duly acknowledged by Article 25 as an essential religious expression. The potential restriction of this practice, based on Article 19(1) (g), would extend its implications to other faiths, considering the principle of equal standing. A discernible disparity emerges in the treatment of the hijab compared to other religious attire. A prohibition on Muslim

¹² Sreeja M S and Amit Chaturvedi, 'Explained: Karnataka Hijab Row and Timeline Of Events' *NDTV* (17 February 2022) <<https://www.ndtv.com/india-news/explained-karnataka-hijab-row-and-timeline-of-events-2774140>> accessed 12 December 2023

female students wearing hijabs could inevitably have repercussions on other religions, notably Sikhism, highlighting the broader impact on diverse religious practices.

In his dissenting stance, Justice Dhulia maintained that the determination of whether the hijab constitutes an essential Islamic religious practice wasn't pertinent to the case. He underscored the importance of the court, as a secular institution, refraining from endorsing any singular interpretation of religious doctrine, and emphasizing the need to respect the diverse faiths and beliefs of worshippers. In a democratic setting, the act of students wearing a hijab to school doesn't disrupt public order, health, or morals. According to Justice Dhulia, the decision on what makes an individual feel safe and comfortable should rest with the person. If wearing a hijab is a longstanding Muslim religious practice, the state, in its view, should invest in educational mechanisms to ensure that its policies and values are clearly understood by students.

All the petitioners are merely seeking the right to wear a hijab – a seemingly straightforward request in a democracy. The crucial question arises: how does this act infringe upon public order, morals, health, decency, or any other component outlined in Article III of the Constitution? The Karnataka High Court's decision left these fundamental queries inadequately addressed. Both in the Government Order of February 05 2022 and the counter-affidavit presented to the High Court, the State failed to provide compelling reasons. The rationale behind deeming a girl wearing a headscarf in a classroom as a public order or law-and-order issue remains elusive. The Supreme Court's landmark judgment in August 1986 in the Bijoe Emmanuel case (Bijoe Emmanuel & Ors v State of Kerala & Ors) aptly addresses the intricacies of this issue.¹³ In this context, the concept of reasonable accommodation signifies a mature society that embraces its diversity. Notably, the court, as highlighted by Justice Dhulia, previously allowed Jehovah's Witness students at a Kerala School to remain silent during the national anthem due to their religious beliefs. This precedent illustrates a nuanced approach to accommodating diverse religious practices within the framework of a democratic and inclusive society.

¹³ Why Justice Sudhanshu Dhulia Wanted Karnataka Order Banning Hijab in Schools Struck Down (n 4)

In a related incident, a Bengaluru college instructed a Sikh student to remove her turban. It's crucial to acknowledge the Sikh community's constitutional right to wear turbans. Importantly, the interim judgment on hijab petitions doesn't apply to Sikh students, emphasizing the need for a nuanced approach to religious practices and individual rights within the framework of diversity and constitutional protections. The issues raised here underscore why Justice Malhotra emphasized the need for sensitive handling of questions involving religious and cultural sentiments in the Sabarimala Temple case. Drawing logical parallels, and distinguishing between scenarios becomes challenging without risking the dress rights of any religious group. Consequently, following the Sabarimala case, Muslim girls are now facing scrutiny for wearing hijabs, revealing the broader implications of decisions on religious practices.

CONCLUSION

In navigating matters of religious sensitivities, it is inappropriate to subject someone's beliefs to strict scrutiny for logic or rationality. This perspective is deeply rooted in the umbrella of religious rights within the fundamental rights section of our Constitution. Recognizing that every religion carries elements of superstition, upheld through traditions, prompts the question: why can't a scarf be accommodated similarly? Many Kendriya Vidyalaya schools, overseen by the State, have consistently allowed the wearing of scarves or head coverings. If these institutions can embrace such attire, the central government, especially when the governing party remains consistent across these entities, should find a way to accommodate diversity. Students are integral citizens of this nation, possessing an equal right to education. Forcing them to choose between education and religion is akin to asking them to relinquish their religious rights. Our Constitution explicitly states that individuals cannot waive their fundamental rights under the rule of law. As highlighted by Justice Chinappa, our Constitution stands as a proponent of tolerance, rather than diluting it. This optimistic perspective encourages a harmonious balance between religious rights and the fundamental principles that guide our nation.

The South African judiciary, in a particular case, emphasized that the reasonableness of religious practices cannot be challenged. If a student is permitted to wear a nose ring outside school but

is forbidden from doing so within its premises, it essentially translates to asking the student not to attend school. Numerous international cases from countries known for their liberal societies have supported this viewpoint. Yet, even if one cites these cases, it's evident that in a conservative society like India, where covering one's head has long been a cultural practice, the wearing of the hijab should be accommodated. In Canada's legal system, Sikhs have been granted the allowance to wear the 'kada' as a form of reasonable accommodation. While Austria rendered a contrary judgement, it faced significant criticism from intellectual circles.

In our Constitution, the term 'secularism' denotes a positive influence, not a negative one. The issue intertwines with the right to privacy and forms part of decisional autonomy.